THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 13121 of 2007

Oral order:

Respondent No.1-workman is a Driver with the petitioners-APSRTC. While he was working as such, he is alleged to have caused an accident on 07.06.2002, in which two persons, namely the scooterist and the pillion rider died. Based on the Chief Inspector's report, respondent No.1 was issued charge sheet dated 02.08.2002. Respondent No.1 submitted his explanation, but unconvinced by the said explanation, the petitioners conducted domestic enquiry. The Enquiry Officer having conducted enquiry, submitted his report holding that the charges leveled against respondent No.1 are proved. Based on the said report, the petitioners issued notice dated 13.11.2002 to respondent No.1 to show cause as to why he should not be removed from service. Respondent No.1 submitted his reply to the show cause notice. However, by order dated 28.11.2002, the petitioners removed respondent No.1 from service. Respondent No.1 unsuccessfully challenged the order of removal in appeal and review petition, which were rejected by the appellate and review authorities by orders dated 16.04.2003 and 14.12.2004 respectively. Aggrieved thereby, respondent No.1 raised an industrial dispute in I.D. No. 126 of 2005, and the Labour Court, Guntur, vide award dated 16.10.2006, set aside the order of removal, and directed the petitioners to reinstate respondent No.1 into service with continuity of service, but without backwages. Hence, this writ petition by the petitioners-APSRTC.

The learned Standing Counsel for the petitioners-APSRTC submitted that the Labour Court committed an error in holding that the findings of the Enquiry Officer are perverse and without any basis. He

submitted that respondent No.1 being a Driver, was duty bound to have anticipation while driving the bus, but the Labour Court without considering this fact, has committed an error in holding that respondent No.1 is not responsible for the accident. He thus prayed that the impugned award be set aside and the writ petition allowed.

On the other hand, the learned counsel for respondent No.1 supported the award. He contended that the Labour Court having held that respondent No.1 is not responsible for the accident, while setting aside the order of removal and directing his reinstatement into service with continuity of service, ought to have awarded backwages also. He thus prayed that no interference is called for with the impugned award, and prayed for dismissal of the writ petition.

Heard the learned Standing Counsel for the petitioners-APSRTC and the learned counsel for respondent No.1-workman and perused the impugned award of the Labour Court.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India, to issue a writ of certiorari are very limited. In **Surya Dev Rai v. Ram Chander Rai**[1], the apex Court held as follows:

> Certiorari, under Art. 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

Within the parameters, as laid down by the apex Court, in the above judgment, the impugned award of the Labour Court has to be judged.

A perusal of the award of the Labour Court would show that though the passenger in his evidence stated that the accident took place due to rash and negligent driving of the scooterist since the

scooterist directly came in middle of the road and dashed the right side portion of the bus, and there is no fault on the part of respondent No.1 and that he is not responsible for the accident, yet ignoring the said evidence of the passenger, the Enquiry Officer, merely based on the preliminary enquiry report and the evidence of the Preliminary Enquiry Officer, who deposed that though the scooterist is responsible for the accident, but respondent No.1 failed to take precautionary measure and that he is responsible for the accident, came to the conclusion that respondent No.1 is responsible for driving the bus with lack of anticipation and failure to take correct decision to avert the accident, even though he observed that there was no evidence against respondent No.1 that he has driven the bus in a rash and negligent manner with lack of anticipation.

Inasmuch as the Enquiry Officer, without considering the evidence of the passenger as well as the evidence of the preliminary enquiry officer, who deposed that it is the scooterist and not respondent No.1 who is responsible for the accident, and merely based on the preliminary enquiry report and the evidence of the preliminary enquiry officer, who deposed that respondent No.1 failed to take precautionary measure, has erroneously held that the charges against respondent No.1 are proved, the Labour Court, upon re-appreciating the evidence on record, has rightly come to the conclusion that the findings arrived at by the Enquiry Officer in the enquiry, are without any basis, and no exception can be taken to the award of the Labour Court, exercising its discretion under Section 11-A of the Industrial Disputes Act, 1947, and modifying the punishment of removal imposed on respondent No.1 to that of his reinstatement into service with continuity of service, but without backwages.

The writ petition is devoid of merit and the same is accordingly

dismissed. No costs.

N.V. RAMANA, J.

Date: 26th October, 2007
KSR

---

[1] AIR 2003 SC 3044=2003AIR SCW3872